

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re K.P., a Person Coming Under the
Juvenile Court Law.

CONTRA COSTA COUNTY
CHILDREN & FAMILY SERVICES
BUREAU,

Petitioner and Respondent,

v.

S.C.,

Objector and Appellant.

A154646

(Contra Costa County
Super. Ct. No. J16-01175)

S.C. (mother) appeals from a juvenile court order terminating her parental rights and selecting a permanent plan of adoption for her young daughter K.P. pursuant to Welfare and Institutions Code, section 366.26 (section 366.26). Mother contends the juvenile court committed reversible error by failing to ensure compliance with the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. § 1901 et seq. We agree.

I. BACKGROUND¹

The section 366.26 hearing was completed on April 27, 2018. Mother did not appear, but she was represented by counsel. The Contra Costa County Children & Family Services Bureau (the Bureau) submitted evidence of its effort to comply with ICWA. That evidence showed that mother had reported possible Native American ancestry through her biological mother, but the notice sent to the Bureau of Indian Affairs (BIA) did not contain the maternal grandmother's maiden name or any other information about her.

The juvenile court did not address whether the Bureau had demonstrated compliance with the requirements of ICWA. Instead, it found that K.P. is not an Indian child and the provisions of the ICWA do not apply. It then turned to the Bureau's recommendation to terminate parental rights in this case. Mother's counsel objected to the recommendation, arguing that mother cared about K.P. and made efforts to visit her. After the matter was submitted, the court concluded there was no evidence to support an exception to the recommended finding to terminate parental rights. Accordingly the court identified a permanent plan of adoption and terminated mother's parental rights.

II. DISCUSSION

“[T]he juvenile court has a continuing duty to conduct an inquiry when it has received information that a dependent child might be an Indian child, as defined by ICWA, and to provide notice to any relevant tribe. This duty arises both under ICWA itself and under California's parallel statutes, Welfare and Institutions Code section 224 et seq. [Citation.] The purpose of both statutory schemes is to ‘enable[] a tribe to determine whether the child [who is the subject of involuntary proceedings in a state court] is an Indian child and, if so, whether to intervene in or exercise jurisdiction over the proceeding.’ [Citation.] The juvenile court's duty to inquire when it has reason to

¹ The parties are aware of the factual and procedural background of this case, which is summarized in a prior opinion of this court denying mother's petition seeking extraordinary relief from the juvenile court's order setting the section 366.26 hearing. (*S.C. v. Superior Court* (Dec. 20, 2017) Case No. A152743.)

know that an Indian child is involved in such a proceeding and to provide sufficient notice to any relevant tribe is independent of any obligation on the part of the parents of the dependent child: The court and the agency must act upon information received from any source, not just the parent (Welf. & Inst. Code, §§ 224.2, subd. (a), 224.3, subd. (b)(1)), and the parent's failure to object in the juvenile court to deficiencies in the investigation or noticing does not preclude the parent from raising the issue for the first time on appeal from an order entered at any hearing in which the juvenile court determined that ICWA was satisfied or does not apply [Citations]. And, because the juvenile court's duty to comply with ICWA's notice requirements is ongoing until it is determined by the relevant tribe, following adequate notice, that the child is not an Indian child [citation], the parent's failure to appeal from an earlier order does not preclude the parent from raising the issue of ICWA compliance in an appeal from a later order, including an order terminating parental rights [Citation]." (*In re K.R.* (2018) 20 Cal.App.5th 701, 706.)

In light of these settled rules, the Bureau concedes that the juvenile court erred by concluding that the ICWA did not apply in this case without conducting a proper inquiry into that matter. The remedy for this error is a limited remand so that the juvenile court can ensure compliance with the directives of the ICWA and Welfare and Institutions Code sections 224.2 and 224.3. (*In re K.R.*, *supra*, 20 Cal.App.5th at p. 709.)

III. DISPOSITION

The judgment terminating parental rights to K.P. is conditionally reversed. The matter is remanded to the juvenile court with directions to comply with the inquiry and notice provisions of the ICWA and Welfare and Institutions Code sections 224.2 and 224.3. On remand, the court must ensure that the Bureau fully investigates K.P.'s possible Indian ancestry and gives new ICWA notices. If, after receiving ICWA notice as required by sections 224.2 and 224.3, the tribes or the BIA do not respond to the ICWA notices, or respond that K.P. is not an Indian child, the judgment terminating parental rights to K.P. shall immediately be reinstated and further proceedings shall be

conducted, as appropriate. If any tribe or the BIA determines K.P. is an Indian child, the court shall proceed accordingly.

TUCHER, J.

WE CONCUR:

STREETER, Acting P. J.

BROWN, J.